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PDF Email

May 17, 2011

The Honorable Tonianne J. Bongiovanni
Federal District Court of New Jersey
402 East State Street
Trenton, New Jersey 08608

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AT 8:30 AM
WILLIAM T. WALSH CLERK
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Re: DeGennaro v. Rally Manufacturing, Inc. et al. 09-443 (JAP)

Your Honor,

Pursuant to our telephone conference yesterday, I needed to follow up regarding my discovery. In terms of preparation for the damages hearing, I would like to acquire a copy of the recording of the IME for the purposes of cross examination of Dr. Yemen's during a deposition or trial or both.

Also, as to the sales figures that were provided to me (Ms. Wilensky was going to clarify the number that were improperly packaged), those sales figures were only applicable to the sale of the product made by Pep Boys, and in order to establish the impact on the State of New Jersey by Rally I would need to know the total number of products which were shipped into the state during the period of time of the accident by Rally. If the total number is significant it may impact Judge Pisano decision. Therefore, I would request I receive them prior to the motion for summary judgment by defendant's requesting to dismiss the punitive claim. These figures have been designated as confidential.

There were a few smaller issues included in the topics I had previously submitted for the proposed depositions. The first was whether Rally received my e-mail immediately after the accident (February 16, 2007 9:33 PM) which alleges the minor cuts on my hand and therefore the fact that the explosion occurred against my body (I would have opened myself up forensic tests of my clothing etc. if I was lying in regards to a recall of the size). This would also prevent the necessity of calling a Verizon representative as a witness as the e-mail is still on Verizon's server. Second, I wanted to confirm the defendant's possession of my certified letter of February 24, 2007 the contents of which documents that I put the battery in my passenger compartment (I would have had to run the risk of lying into potential security cameras in the store's parking lot). I have the return receipts but I would like to link them to the contents of an actual letter. Lastly, I wanted to ask them to confirm my call to the store from my sister's home the day of the accident which establishes the time of the accident (an internal email reflects a call to some type of Pep Boys "hotline" the following day but I am referring to the call to local retail store). I may still need to try to subpoena Verizon for this phone call to the store because that will establish the precise time of the accident. Verizon has explained that it is possible they have a record but the chances are very remote since it was not long distance and they normally don't keep records in the suburbs when people are on a calling plan

Very truly yours,

Alfred DeGennaro

CC: Margot Wilensky Attorney for Defendants

(Letter response from defendant is attached)

Only discovery ordered during the 5/6/11 conference shall be permitted. Denied as to any additional requests. Discovery is closed.

So Ordered this 17 day of May, 2011

M. Bongiovanni



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May 17, 2010

Via Facsimile to (609) 989-0435

Honorable Tonianne J. Bongiovanni, U.S.M.J.
United States District Court, District of New Jersey
402 East State Street, Courtroom 6 East
Trenton, New Jersey 08608

Re: DeGennaro v. Rally Manufacturing Inc., et al.

Civil Action No.: 09-443 (JAP)
Our File No.: 348-1014

Dear Judge Bongiovanni:

This firm represents defendants Rally Manufacturing, Inc. and Pep Boys—Manny Moe & Jack, i/s/a Pep Boys, Inc. We write in response to plaintiff's letter sent to Your Honor today.

Although we are unclear as to what plaintiff is seeking, it was our understanding that all discovery issues were addressed and ruled on by Your Honor during yesterday's status conference. Nevertheless, we note that the issues plaintiff seems to be addressing in his letter are not germane to liability, which is now moot, or the issue of punitive damages. Furthermore, plaintiff had ample opportunity to discuss all discovery issues during the conference. As such, we respectfully request that the irrelevant discovery requests contained in plaintiff's letter be denied.

We appreciate Your Honor's time and attention to this matter.

Respectfully submitted,

A handwritten signature in black ink that reads "Margot Wilensky".

Margot Wilensky
Haworth Coleman & Gerstman, LLC

MW/mw
cc: (via email)

Alfred DeGennaro
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